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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962

No. 325

EVE SPIRO JOHN,

Petitioner,

vs.

TRIBUNE COMPANY, A CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE BLAKEMORE-WARREN PRINTING COMPANY, CHICAGO

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We ask that the Petition for Certiorari be denied for the following reasons:

First: The Supreme Court of Illinois decided that defendant's two articles were, as a matter of Illinois law, not "of and concerning" the plaintiff. The articles in question reported a raid upon a house of prostitution and the arrest and booking of its madam and inmates. The

first story read: "Dolores Reising, 57, alias Eve Spiro and Eve John, who, police said, was known years ago as Accardo's woman friend, was held as the suspected keeper of the apartment"; the second stated: "Dorothy Clark, 57, who gave 4417 Ellis Ave. as her address, was charged with being keeper of a disorderly house * * *. Police said she is also known as Dolores Reising, Eve Spiro, and Eve John, and was known years ago as a girl friend of Tony Accardo, Capone gangster." The pleadings disclosed that at the time of these publications the plaintiff was 27 years old and resided below the madam's quarters.[1]

The Supreme Court of Illinois held (without dissent; the dissent concerned jurisdiction only) that the defendant's articles were not "of and concerning" the plaintiff because she was 27 and not 57 and that "the alias names do not change the subject of the publication * * * but simply disclose the subject's false name or names." *John* v. *Tribune Co.*, 24 Ill. 2d 437, 442, 181 N. E. 2d 105, 108. Such a ruling is solely a decision of local law and presents no federal question. *Patterson* v. *Colorado*, 205 U. S. 454; *Sweeney* v. *Schenectady Union Pub. Co.*, 122 F. 2d 288 (2nd Cir.); *aff'd* 316 U. S. 642; *Rose* v. *Indianapolis Newspapers, Inc.*, 213 F. 2d 227 (7th Cir.); *Lair* v. *Christian Restoration Ass'n*, 207 F. 2d 379 (8th Cir.). Indeed, even had the Supreme Court of Illinois made a marked departure in its construction of the Illinois law, no federal question would be raised. *West* v. *Louisiana*, 194 U. S. 258, *Arizona Employers' Liability Cases*, 250 U. S. 400; there is no federal right to *stare decisis*.

1. At the trial it appeared that the madam was the plaintiff's landlady and that the plaintiff had resided with her two minor children in the English basement of the madam's building for seven years.

Second: After the Supreme Court of Illinois construed the defendant's language to be not "of and concerning" the plaintiff its opinion *then* proceeded:

> "We *further* believe the language in defendant's articles is not libelous when the innocent construction rule is consulted. That rule holds that the article is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law. Although this court has not heretofore expressed the rule, it has been adopted and applied by our Appellate Courts and by Federal Courts sitting in Illinois [with citation]." (italics ours) 24 Ill. 2d at 442; 181 N. E. 2d at 108.

The innocent construction rule was therefore an alternative additional ground of decision; the word "further" so indicates.

The petitioner here urges she has been denied federal due process and equal protection because of the approval of the innocent construction rule. This Court, however, does not review state decisions if they are also predicated upon an independent nonfederal ground; the cases so holding are legion. *Pflugeger* v. *Sherman*, 293 U. S. 55; *Cuyahoga River Power Co.* v. *Northern Realty Co.*, 244 U. S. 300; *Allen* v. *Arguimbau*, 198 U. S. 149; *Zorach* v. *Clauson*, 343 U. S. 306; *Herb* v. *Pitcairn*, 324 U. S. 117, 125. The opinion of the Supreme Court of Illinois shows this proposition precisely applicable here; the innocent construction rule was an alternative ground for decision, solely apart from the reasons set forth in *First* above.

Moreover, even if the innocent construction rule were not merely an alternate ground for decision, no federal question would be presented. For, as stated above, "a State may freely alter, amend or abolish the common law within

its jurisdiction," *Warehouse Co.* v. *Tobacco Growers*, 276 U. S. 71, 89, and has done so to its libel law by both statute and decision. See *e.g.*, *Werner* v. *Southern California Associated Newspapers*, 35 Cal. 2d 121, 216 P. 2d 825 (Calif.), *appeal dismissed*, 340 U. S. 910; *Holden* v. *Pioneer Broadcasting Co.*, 228 Ore. 405, 365 P. 2d 845; *Layne* v. *Tribune Co.*, 146 So. 234, 86 A. L. R. 466 (1933).

Third: As the Petition itself concedes (p. 6), plaintiff raised no federal question until she filed her petition for rehearing in the Supreme Court of Illinois. The defendant, however, urged the innocent construction rule from the inception of this case and at every possible procedural turn. The petitioner for her part raised no federal question concerning the innocent construction rule in the *nisi prius* court. She raised no federal question in the first appeal to the Appellate Court of Illinois. She urged no federal question when the defendant petitioned the Supreme Court of Illinois for review. Nor did she even raise a federal question in her brief on the merits to the Supreme Court of Illinois after review was granted. (The pertinent briefs of the parties in the Appellate and Supreme Court proceedings have been lodged with the Clerk of the Court.)

This Court has specifically held that constitutional questions first raised in a petition for rehearing to the State Supreme Court are not timely presented. *Herndon* v. *Georgia*, 295 U. S. 441, 443. Additionally, the Illinois law requires that all constitutional contentions be raised in the trial courts or they are waived. *People ex rel. Stoffel* v. *Town of Cicero*, 404 Ill. 432; *People ex rel. Toman* v. *Belmont Radio Corp.*, 388 Ill. 11. The Court has sanctioned this procedure and refused to hear constitutional questions not raised in accordance with Illinois law. *Spies* v. *Illinois*, 123 U. S. 131, 181; see also *Mutual Life Ins. Co.* v. *McGrew*, 188 U. S. 291, 308; *Barbour* v. *Georgia*, 249 U. S. 454, 460.

Petitioner, who has not satisfied either this Court or Illinois prerequisites for preserving federal questions, cannot now raise any such issue here.

We therefore respectfully request the Petition be denied.

Respectfully submitted,

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